



September 13, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re:** Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

On September 12, 2017, Harold Feld and Yosef Getachew of Public Knowledge (collectively “PK”) met with Amy Bender, Legal Advisor to Commissioner O’Rielly, with regard to the above captioned proceeding.

PK expressed concern that the record in the proceeding does not support the Commission’s presumptive conclusion that streamlining the copper retirement and discontinuance rules would accelerate wireline broadband deployment. The Commission neither articulates a policy justification nor conducts an economic analysis to warrant its proposals. PK explained that any cost-benefit analysis the Commission conducts should look beyond the market as directed by the Communications Act. The Communications Act mandates the Commission to consider non-economic public interest values such as universal service,<sup>1</sup> consumer protection,<sup>2</sup> network reliability, and public safety as they pertain to communications networks.<sup>3</sup>

PK urged the Commission to maintain its current copper retirement and notification rules, and preserve the “functional test” as required by Section 214(a) of the Communications Act. Copper networks have served as the backbone of the nation’s communication system for decades. Despite the transition to fiber and wireless networks, the Commission’s most recent data shows

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<sup>1</sup> 47 U.S.C. § 151.

<sup>2</sup> See, e.g., 47 U.S.C. § 214.

<sup>3</sup> See 47 U.S.C. § 256; see also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915 ¶ 111 (2005) (The Commission emphasized that it would “not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era.”).

that almost half of all businesses and nearly twenty percent of consumers nationwide rely on an incumbent carriers' switched access line for service.<sup>4</sup>

PK expressed concern over the Commission's Request for Comment to eliminate the "functional test" as required by Section 214(a), reiterating its arguments that the use of the term "service" under Section 214(a) has long been understood to extend beyond the four corners of the tariff both from statutory interpretation and the practical application of Section 214. When interpreting Section 214(a) including in previous discontinuance proceedings, the Commission has consistently interpreted the term "service" to mean the subject of public convenience and necessity, not merely those services defined by the tariff. The Commission must look at the entirety of Section 214, including Section 214(c) which discusses in further detail the Commission's authority, including language regarding terms and conditions bound up in the certificate, not in any tariff. This interpretation allows the commission to apply Section 214 as a licensing statute and oversee transactions between telecommunications carriers.

PK reiterated the dangers of streamlining the copper retirement and service discontinuance rules as evidenced by the destruction Hurricane Sandy caused to Verizon's copper network on Fire Island, NY.<sup>5</sup> Due to the storm, Verizon replaced its copper network with VoiceLink. Many essential services such as credit card readers, fax machines, and alarm systems did not reliably work despite the expectation of consumers and small businesses.

PK explained that the current rules allow the Commission to ensure that communities that have lost landline service due to the destruction caused by Hurricane Harvey and the potential impact of Hurricane Irma are not left with a substitute service that do not meet their needs. During this period of severe weather, the Commission must enforce its rules under Section 214 as explained in its *2016 Report and Order* outlining the criteria carriers must meet when they decide to replace their copper networks with alternative services.<sup>6</sup> PK expressed concern that if the Commission acts on a declaratory basis to eliminate its current rules during this period of severe weather it would cause regulatory uncertainty as to whether carriers would still have to file Section 214 discontinuances and consumers would be left with inadequate services.

In particular, PK expressed concern that, in light of the pending proceeding, carriers that do not intend to repair their existing legacy networks may delay filing the required Section 214 request

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<sup>4</sup> See FCC, Voice Telephone Services: Status as of June 30, 2016, Industry Analysis and Technology Division Wireline Competition Bureau (April 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344500A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf).

<sup>5</sup> See *Technology Transitions et al*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14970 para. 4 (discussing Verizon's proposal to replace copper services with wireless services after Hurricane Sandy); see also Public Knowledge, *The Phone Network: Lessons From Fire Island*, [https://www.publicknowledge.org/assets/uploads/documents/Lessons\\_from\\_Fire\\_Island\\_One-Pager.pdf](https://www.publicknowledge.org/assets/uploads/documents/Lessons_from_Fire_Island_One-Pager.pdf).

<sup>6</sup> See *Technology Transitions et al*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8313-8355 ¶¶ 88-194 (2016) (key metrics of an adequate service include voice quality, network reliability, and ability to connect to 911 service).

in the hopes that the Commission will eliminate the existing “functional test” and thus relieve carriers of the obligation to meet the quality standards imposed by the *2016 Report and Order*. PK reiterated that it urged the Chairman to issue a public statement reminding carriers of their responsibility to abide by the Commission’s rules with regard to termination of copper-based TDM service, and that failure to file a timely Section 214 request under the current “functional test” if carriers do not intend to restore legacy copper-loop service constitutes a violation of the Commission’s rules.

Respectfully submitted,

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Cc: Amy Bender